

BY-LAWS  
OF  
BIRCH GLEN CONDOMINIUM ASSOCIATION, INC.

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BY-LAWS  
OF  
BIRCH GLEN CONDOMINIUM ASSOCIATION, INC.

ARTICLE I

NATURE OF BY-LAWS

SECTION 1.01. Purpose. These By-laws are intended to govern the administration and management of Birch Glen Condominium Association, Inc., a nonprofit corporation organized under Title 15A of the New Jersey Statutes, and to provide for the management, administration, utilization and maintenance of the Common Elements described in the Master Deed for Birch Glen Condominium.

SECTION 1.02. Definitions. Unless the context clearly indicates otherwise, all definitions set forth in the Master Deed or in N.J.S. 46:8B-3 are incorporated herein by reference.

SECTION 1.03. Principal Office. The principal office of the Association shall be located as determined by the Board.

ARTICLE II

MEMBERSHIP

SECTION 2.01. Members. Every person, firm, association, corporation or other legal entity, including Sponsor, who is an Owner of any Unit shall automatically be a member of the Association provided, however, that any person, firm, association, corporation or legal entity who holds an interest in a Unit merely as a security for the performance of any obligation (including but not limited to mortgagees or trustees under deeds of trust) shall not be a member of the Association.

SECTION 2.02. Member in Good Standing. A member shall be deemed to be in good standing if, and only if, (a) the member shall have fully paid all Assessments made or levied by the Association against the member and the member's Unit, including

any and all interest, charges, costs, attorneys' fees, penalties and expenses; and (b) the member's voting rights and privileges have not been suspended by action of the Board. Any date set forth in these By-laws or any resolution of the Board for determining good standing for voting purposes, as well as any related requirement which may be established by the Board, shall be deemed supplemental to and not in derogation of, the record date provisions of N.J.S. 15A:5-7.

**SECTION 2.03. Change of Membership.** Change of membership shall be accomplished by recording in the Middlesex County Clerk's Office a deed or other instrument establishing a record of title to a Unit. The membership of the prior Owner shall be thereby terminated.

**SECTION 2.04. Rights of Membership.** Every person who is a member of the Association shall have the right and privilege to use and enjoy General Common Elements and to assign such right and privilege to the member's family, guests, visitors, invitees, permitted tenants and occupants, subject to the provisions of these By-laws, the Master Deed, and the rights of the Association: (a) to promulgate Rules and Regulations governing the use and enjoyment of General Common Elements; (b) to suspend the use and enjoyment of General Common Elements; and (c) to dedicate or transfer all or part of the General Common Elements.

**SECTION 2.05. Suspension of Membership Rights and Privileges.** Voting rights and privileges of any member may be suspended by the Board for any period during which any Assessments or portion thereof remain unpaid by the member. Such rights and privileges shall be restored upon payment of such Assessments, including any interest, charges, costs, attorneys' fees, penalties and expenses levied by the Association by cash, money order, or certified or collected funds; provided, however, that a member shall be entitled to participate in an upcoming vote only if such overdue payment is received by the Association at least ten (10) days prior to a meeting at which a vote is to occur, or ten (10) days prior to the date set for the counting of the votes, or ten (10)

days prior to the deadline for the return of ballots, unless otherwise decided by the Board. If a member is in violation of any Rules and Regulations or in violation of any covenant or restriction of the Master Deed or these By-laws, the Board, in its discretion, may suspend any and all rights and privileges of the member for a period not to exceed thirty (30) days for any single violation, but if the violation is of a continuing nature, such rights and privileges may be suspended for a longer period, from time to time, or indefinitely, until such time as the violation is abated. No such suspension action shall be taken by the Board until the member is afforded notice of the unpaid Assessments or other violation, as applicable, and such member is given an opportunity for a hearing before the Board or a committee established by the Board.

**SECTION 2.06. Contribution to Capital.** Each Owner shall pay to the Association upon acquisition of title to a Unit, a non-refundable and non-transferrable contribution to the working capital of the Association in an amount equal to one-sixth (1/6) of the then current Annual Common Expense Assessment for the Unit. Payment of such contribution shall be a condition precedent to the exercise of rights and privileges of membership in the Association. Any unpaid contribution shall be deemed a lien on the Unit and the personal obligation of the Owner in the same manner as any unpaid Assessments.

**SECTION 2.07. Votes.**

(a) **Election of Trustees.** For the election of trustees, each member in good standing shall be entitled to cast one unweighted vote for each Unit to which the member holds title.

(b) **Other Matters.** Except as otherwise provided in the Master Deed, in matters other than the election of trustees, each member in good standing shall be entitled to cast one vote for each Unit to which the member holds title, which vote shall be equal in weight to the relative percentage interest in the Common Elements appurtenant to the Unit for which it is cast. When more than one person holds title, the

vote for each Unit shall be exercised as the co-Owner members determine among themselves. When a co-Owner member signs a proxy or ballot or purports to vote for any co-Owner member(s), such vote shall be counted as the full vote for the Unit unless, before the vote counting begins, any other co-Owner member submits a proxy or ballot, objects in person or by proxy at a meeting, or objects in a writing delivered to the Secretary or manager of the Association. If co-Owner members disagree as to the vote, the vote shall be split equally among the co-Owner members.

**SECTION 2.08. Proxies.** Proxies shall be permitted with respect to all elections of trustees and any other Association matter. All proxies shall be in writing, signed by an individual member (or in the case of joint Owners, by at least one of them), or an Owner's duly authorized representative(s) and delivered to the Secretary or manager of the Association or such other person as may be designated in the notice of the meeting, at least eight (8) hours prior to the commencement of any meeting at which a vote is to be taken. Proxies may be revoked at any time prior to the commencement of the voting, and no proxy shall be valid after eleven (11) months from its date unless the proxy expressly provides for a longer period not to exceed three (3) years from the date of execution. All proxies shall be substantially in the form prescribed by the Board, and if not in such form, shall be deemed invalid, which determination shall be made in the sole and absolute discretion of the Board.

**SECTION 2.09. Township Liaison Member.** Notwithstanding anything herein to the contrary, the Township shall have the right, but not the obligation, to designate one (1) person who is either a Township employee or an appointed or elected official of the Township ("Township Liaison Member") to attend all regular and special meetings of the Association and/or its Board for so long as the Condominium shall lawfully exist. The Township Committee may adopt procedures for the appointment of such Township Liaison Member (including the term any such Township Liaison Member may serve and procedures for the filling of any vacancy in such position). The Township

shall provide the Association's Secretary or manager with official written notice of the appointment of a Township Liaison Member and the name, address and telephone number of the appointee. Such Township Liaison Member shall have no voting rights or other membership rights or privileges in the Association or on the Association's Board, but shall have the same rights and privileges to participate in Association meetings as any member, including the right to comment on any actions of the Association or its Board. Neither the Township nor the Township Liaison Member shall be required to pay any Common Expenses or other dues or Assessments to the Association. A copy of the minutes of all Association meetings shall be provided, upon request, to the Township Liaison Member. All notices of Association and/or Board meetings (including special meetings) shall be forwarded to the Township Liaison Member in accordance with the notice provisions set forth in these By-laws, with a copy of any such notice to be forwarded by the Township Liaison Member to the Township Administrator.

### ARTICLE III

#### MEETINGS OF MEMBERS

SECTION 3.01. Place of Meetings. All meetings of members of the Association shall be held at the principal office of the Association or at such other place as may be designated by the Board.

SECTION 3.02. Annual Meetings. The annual meetings of the Association membership shall be held on the second Tuesday of April of each year or as otherwise determined by the Board, except that the first annual meeting shall be held within sixty (60) days after Sponsor conveys twenty-five percent (25%) of the Units.

SECTION 3.03. Special Meetings.

(a) After the first membership meeting, special meetings of members may be called by the President whenever the President deems such a meeting advisable or shall be called by the Secretary when so ordered by the Board or upon the written request of at least twenty-five percent (25%) of Association members in good standing. The notice

of a special meeting shall state the purpose(s) of such meeting and the matter(s) proposed to be acted upon. No special meeting may be called to consider any matter which is substantially the same as a matter voted upon at any meeting held during the preceding twelve (12) months, unless at least fifty percent (50%) of the Association members in good standing so request.

(b) Special membership meetings shall be called, as necessary, by the President or Secretary for the purpose of conducting transition trustee elections in accordance with Section 4.03 of these By-laws after conveyance of 25%, 50%, 75% and 100% of the Units by Sponsor. Such special meetings shall be held within sixty (60) days after the conveyance of the applicable number of Units unless an annual meeting is held within the sixty (60)-day period.

**SECTION 3.04. Notice.** Except as otherwise provided by law, notice of each regular and special meeting of members shall be given, not less than ten (10) days nor more than sixty (60) days before the date of the meeting, to each member in good standing. Such notice shall be sent to the last known address of such members, by personal delivery, first class mail, telegram or, if requested by a member, by telecopy or electronic mail. Except where expressly required by law, no publication of any notice of a meeting of members shall be required. Such notice shall state the time, place and purpose(s) of the meeting. Notice of any meeting of members shall not be required to have been sent to any member who attends the meeting in person or by proxy or who submits a ballot by mail. Unless otherwise expressly required by law, notice of any adjourned meeting of the members shall not be required to be given if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and the purpose and business of the adjourned meeting are the same as for the meeting originally called.

**SECTION 3.05. Quorum.** At each membership meeting, forty percent (40%) of the members in good standing, present in person or by proxy, shall constitute a



quorum for the transaction of business unless otherwise provided by law. In the absence of a quorum, the members in good standing present in person, by majority vote, may adjourn the meeting from time to time, until a quorum shall be present or represented. At any such adjourned meeting at which a quorum may be present, any business may be transacted which may have been transacted at the meeting originally called.

**SECTION 3.06. Chairperson and Secretary.** At each meeting of the members, the President or, in the President's absence, the Vice President, or in the absence of both of them, a person chosen by a majority vote of the trustees present shall act as chairperson, and the Secretary or Secretary's designee, or a person whom the chairperson shall appoint, shall act as secretary of the meeting.

**SECTION 3.07. Voting.** Except as otherwise required by the Certificate of Incorporation, the Master Deed or any law, a quorum being present, a majority of eligible votes cast in person or by proxy shall be sufficient on those matters which are to be voted on by the membership. Notwithstanding anything to the contrary herein, unless otherwise decided by the Board, only members who are in good standing at least ten (10) days prior to a meeting at which a vote is to occur, or ten (10) days prior to the date set for the counting of votes, or ten (10) days prior to the deadline for the return of ballots, shall be entitled to vote. Unless demanded by a member in good standing present in person or by proxy at a meeting or determined by the chairperson of the meeting to be advisable, the vote on any question or election, other than a transition election (see Section 4.03 below) or removal of a trustee by the membership (see Section 4.06 below) need not be by ballot.

**SECTION 3.08. Ballot by Mail.** The Board, in lieu of or in conjunction with calling a membership meeting, may submit any question or election, other than a transition election (see Section 4.03 below) or removal of a trustee by the membership (see Section 4.06 below), to a vote of the membership by a ballot by mail. No ballot by mail shall be valid or tabulated unless the signature of the member(s) submitting the

ballot has been verified on the ballot in accordance with any Board procedures. The Board shall appoint judges to tabulate the ballots whose report shall be placed in the minute book of the Association. To conduct a ballot by mail, the Board shall serve a notice upon all members which shall (a) state with specificity the question(s) upon which the vote is to be taken; (b) state the deadline date by which ballots must be returned to be counted; (c) provide an official ballot for the purposes of the vote; and (d) state the date upon which the action contemplated by the question(s) shall be effective, which date shall not be less than ten (10) days after the date ballots must be returned.

**SECTION 3.09. Judges.** If at any membership meeting, a vote by ballot shall be taken on any question, the chairperson of such meeting shall appoint one or more judges to act with respect to such vote. Each judge so appointed shall take an oath to execute faithfully the duties of a judge at such meeting with strict impartiality and according to the best of her or his ability. Such judges shall conduct the voting and accept the votes, and when voting is completed, shall ascertain and report to the chairperson the number of votes respectively for and against a question or the winners of an election. Reports of judges shall be in writing and placed in the minute book of the Association. Such judges may also be called upon by the chairperson to decide upon the eligibility of members to vote, whereupon the decision of the judge(s) shall be final. Judges need not be members of the Association and any officer or trustee of the Association may be a judge on any question, other than a vote for or against his or her election to any position with the Association or any other question in which he or she may be directly interested.

**SECTION 3.10. Order of Business.** The order of business at the annual meeting of the members and at any special meetings of members, as far as practicable, shall be:

- (a) Calling of the roll and certifying proxies;
- (b) Proof of notice of meeting and waiver of notice;

- (c) Reading and disposal of any unapproved minutes;
- (d) Receiving reports of officers;
- (e) Receiving reports of committees;
- (f) Appointment of judges, if appropriate;
- (g) Election of trustees, if appropriate;
- (h) Old business;
- (i) New business;
- (j) Adjournment.

#### ARTICLE IV

##### BOARD OF TRUSTEES

SECTION 4.01. Powers and Duties. The affairs of the Association shall be administered and supervised by the Board which shall have all those powers granted to it by the Certificate of Incorporation, the Master Deed, these By-laws, the Rules and Regulations, and by law.

SECTION 4.02. Qualifications. The following criteria shall be qualifications for nomination, appointment or election to a trusteeship position on the Board:

(a) **Membership in Good Standing.** Membership in good standing shall be a qualification of any nominee or appointee to a trusteeship position and for continued service on the Board.

(b) **Representation.** Partnerships, corporations, fiduciaries and co-Owners holding memberships in good standing may designate one individual per Unit owned to be eligible for nomination, appointment or election as trustees in accordance with the following qualifications:

(1) Partnership designees shall be members, employees or agents of the partnership;

(2) Corporate designees shall be officers, stockholders, employees or agents of the corporation;

(3) Fiduciary designees shall be fiduciaries, officers, or employees of the fiduciary; and

(4) Individuals who are co-Owners may designate one and only one of them and the Board, if it is aware of any disagreement among the co-Owners as to such

designation, may, but shall not be obligated to, require the written consent of a majority in interest of such co-Owners for such designation.

(c) **Disqualification of Trustees.** Any elected trustee whose membership in the Association is not in good standing for thirty (30) consecutive days shall automatically be disqualified as a trustee upon expiration of the thirty (30)-day period and a replacement shall be appointed by the Board within thirty (30) days thereafter to serve the remainder of the term as contemplated in Section 4.07 hereof. Any trustee who no longer holds title to any Unit is automatically disqualified as a trustee effective as of the date of the conveyance or transfer of title.

**SECTION 4.03. Number; Transition Elections.** Until the conveyance of at least 25% of the Units by Sponsor to other Owners, and thereafter until an additional trustee has been elected and qualified as provided herein, the Board shall consist of three (3) persons appointed by Sponsor. After conveyance of 25 % of the Units by Sponsor to other Owners (85 units), the Board shall be composed of four (4) persons, one (1) of whom shall be elected by a majority of the votes of members in good standing other than Sponsor and three (3) of whom shall be appointed by Sponsor. After conveyance of 50% of the Units by Sponsor to other Owners (170 units), the Board shall consist of five (5) persons, two (2) of whom shall be elected by a majority of the votes of members in good standing other than Sponsor and three (3) of whom shall be appointed by Sponsor. After the conveyance of 75% of the Units by Sponsor to other Owners (254 units), members other than Sponsor shall be entitled to elect all but one (1) of the five (5) trustees. Notwithstanding anything to the contrary herein, Sponsor shall be entitled to appoint at least one (1) trustee as long as Sponsor holds one (1) or more Units for sale or rent in the ordinary course of business. After 100% of the Units have been conveyed by Sponsor to other Owners (339 units), members other than Sponsor shall be entitled to elect all of the trustees. The effective date for each increase in the number of trustees referred to in this Section shall be the date of the applicable transition election.

**SECTION 4.04. Annual Election; Term of Office.** The election of trustees shall take place at the annual meetings of the Association membership, except when a special transition election meeting is required under Section 3.03(b) and Section 4.03 of these By-laws. Trustees shall be elected for one (1)-year terms and shall hold office until their respective successors have been duly elected and qualified, or until removed.

**SECTION 4.05. Sponsor's Protective Provisions.** After control of the Board has become vested in elected trustees and so long as Sponsor owns at least one (1) Unit and holds same for sale or rent in the ordinary course of business, the following protective provisions shall apply:

(a) Neither the Association membership nor the Board shall take any action that will impair or adversely affect the rights of Sponsor or cause Sponsor to suffer any financial, legal or other detriment, including but not limited to any direct or indirect interference with the sale or rental of Units, or the discriminatory levying, increasing or collecting of any Assessments against Sponsor or Units owned by Sponsor.

(b) The Association membership and the Board shall continue the same level of maintenance, operation and services as provided immediately prior to the assumption of control of the Board by elected trustees, until the last Unit owned by Sponsor is sold.

(c) In furtherance of these protective provisions, Sponsor shall have the right to veto any and all actions of the membership and the Board which may have any direct or indirect detrimental impact upon Sponsor as may be determined in the sole discretion of Sponsor. Sponsor shall exercise this veto within ten (10) days after its receipt of notice that a resolution or other action is proposed or has been taken by the membership or the Board. Sponsor shall notify the Secretary or manager of the Association of its exercise of the veto and any such proposal or action shall thereby become null and void ab initio and of no further force or effect.

These protective provisions shall be construed in accordance with and not in derogation of N.J.S. 46:8B-12.1 and N.J.A.C. 5:26-8.4.

**SECTION 4.06. Removal.** At any duly held annual or special meeting of the members, any one or more elected trustees may be removed with or without cause by a majority of the eligible votes cast in person or by proxy, provided that the notice of the meeting included, as a purpose of the meeting, the election or removal of any trustee(s). A successor shall then and there or thereafter be elected by the membership to fill the vacancy thus created. Each person so elected shall be a trustee for the remainder of the term of the trustee whose term she or he is filling and until a successor is duly elected and qualified. Any trustee whose removal has been proposed shall be given an opportunity to be heard at the meeting. This provision shall not apply to any trustee appointed by Sponsor.

**SECTION 4.07. Vacancies.** Vacancies on the Board caused by any reason other than the removal of a trustee by a vote of the members or the resignation or absence of a trustee appointed by Sponsor, shall be filled by a vote of a majority of the remaining elected trustees at a meeting of the Board after the occurrence of any such vacancy, even though the elected trustees present at such meeting may constitute less than a quorum. Each person so elected shall be a trustee for the remainder of the term of the trustee whose term she or he is filling and until a successor is duly elected and qualified. Only Sponsor shall have the right to fill any vacancy on the Board caused by the resignation or absence of a trustee appointed by Sponsor. When a member of the Board of Trustees who has been selected by Unit Owners other than the Sponsor is removed or resigns, that vacancy shall be filled by a Unit Owner who is not associated with the Sponsor.

**SECTION 4.08. Meetings; Notice; Attendance by Members.** The first meeting of the Board following the first annual meeting of the members shall be held at such time and place as shall be fixed by a majority of the Board, and no notice shall be necessary.

(a) **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the trustees, but at least two (2) regular meetings of the Board shall be held each year.

(b) **Special Meetings.** Special meetings of the Board may be called at any time by the President or Secretary or at least two (2) trustees.

(c) **Notice.** Notice of regular and special meetings of the Board shall be given to each trustee by telephone, personal delivery, first class mail, telegram or, if requested by a trustee, by telecopy or electronic mail, at least three (3) business days prior to the day of the meeting. Notice of Board meetings shall state the time, place and purpose(s) of the meeting; provided that any business may be transacted at a regular meeting regardless of whether such business was set forth in the meeting notice as a purpose of the meeting. Any trustee may, at any time, waive notice of any meeting. Actual attendance by a trustee at any meeting shall constitute a waiver of notice by the trustee. If all trustees are present, no notice shall be required and any business may be transacted at such a meeting.

(d) **Attendance by Members.** All Board meetings, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance by all members. Notice of such Board meetings shall be given to all members in the same manner as prescribed in Section 4.08(c). Notwithstanding the foregoing, the Board may exclude or restrict attendance at meetings, or portions of meetings, dealing with (1) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; (2) any pending or anticipated litigation or contract negotiations; (3) any matters falling within the attorney-client privilege, to the extent that confidentiality is required for the attorney to exercise his or her ethical duties as a lawyer; or (4) any matter involving the employment, promotion, discipline or dismissal of a specific Association officer or employee. At each open Board meeting, or open

portion of a Board meeting, minutes shall be taken and copies of the minutes shall be made available to all members before the next open Board meeting.

**SECTION 4.09. Quorum; Voting.** At all Board meetings, a majority of the trustees shall constitute a quorum for the transaction of business. If at any meeting of the Board there shall be less than a quorum, the majority of those trustees participating shall adjourn the meeting to a new date. At such adjourned meeting of the Board at which there is a quorum, any business of the Board which may have been transacted at the original meeting may be transacted by the trustees without further notice being necessary. The vote of a majority of those trustees participating and eligible to vote at a meeting of the Board at which there is a quorum be necessary for valid action by the Board. Any or all trustees may participate in meeting of the Board by means of a conference telephone or any other means of communication by which all persons participating in the meeting of the Board are able to hear or otherwise communicate with each other.

**SECTION 4.10. Approval.** The transaction of any business or making of any decision at any meeting of trustees shall constitute valid action by the Board if, either before or thereafter, every trustee signs a written consent thereof. All such waivers, consents or approval shall be in writing and filed with the Secretary and placed in the minute book of the Association.

**SECTION 4.11. Non-Waiver.** All rights, duties, and privileges of the Board shall be deemed to be continuing and shall not be exhausted by any single act or series of acts. To the same extent, the failure by the Board to use or employ any remedy, right or privilege for any period of time shall not in any way preclude its exercise or use by the Board, nor shall any custom or practice bind the Board.

**SECTION 4.12. Consent in Lieu of Meeting and Vote.** Anything to the contrary in these By-laws, the Certificate of Incorporation or the Master Deed notwithstanding, the entire Board shall have the power to take action on any matter on



which it is authorized to act, without the necessity of a formal meeting and vote, if all the trustees entitled to act shall consent in writing to such action.

#### ARTICLE V

#### POWERS AND DUTIES OF BOARD OF TRUSTEES

The Board shall have, but not be limited to, the following powers and all other powers granted or necessarily implied in these By-laws, the Master Deed, the Certificate of Incorporation and the Rules and Regulations:

- (1) To employ, by contract or otherwise, a manager or managing agent or hire an independent contractor (referred to herein as the "manager") to oversee, supervise and carry out the responsibilities of the Board. Such manager shall be compensated upon such terms as the Board deems necessary and proper; and
- (2) To employ any person, firm or corporation to repair, maintain and renovate all Condominium property owned, maintained or operated by the Association; to seed, sod, plant, transplant, prune, fertilize, water, cut, destroy, pull plants up or out, spray substances, put pesticides or other chemical or biological agents in, under or above the water or grounds, grass, trees, streams, waterways, including the right to dam or alter the flow of said waterways on the Condominium lands; to build, erect, repair, maintain, and renovate recreation facilities, roads, parkways, walkways or paths; to lay pipes or culverts; to bury utilities; to put up lights or poles; to erect signs and notices of various sorts; and
- (3) To employ professional counsel and to obtain advice from persons, firms or corporations such as, but not limited to, landscape architects, recreation experts, architects, engineers, planners, biologists, attorneys and accountants; and
- (4) To employ or contract for water, sewer, electricity and gas or other forms of utilities, cable or master antenna television, painting, cleaning, building, repairing, renovating, remodeling; and

- (5) To employ all personnel necessary for the efficient discharge of the duties of the Board hereunder; and
- (6) To adopt, enforce and amend Rules and Regulations relating to the operation, use, maintenance and enjoyment of the Units and Common Elements; and
- (7) To maintain businesslike relations with Unit Owners or occupants whose service requests shall be received, considered and recorded in systematic fashion, to show the action taken with respect to each; as part of a continuing program, to secure full performance by such Unit Owners or occupants of all such items and maintenance for which they are responsible; and
- (8) To coordinate the plans of Unit Owners and occupants of Units for moving their personal effects into a Unit or out of it, with a view toward scheduling such movements so that there shall be a minimum of inconvenience to others; and
- (9) To enforce obligations of the Unit Owners and do anything and everything else necessary and proper for the sound management of the Condominium, including the right to bring lawsuits to enforce the terms, conditions and restrictions contained in the Master Deed, Certificate of Incorporation, these By-laws, any Rules and Regulations or other documents governing the Condominium, the Association and Unit Owners; and
- (10) To investigate, hire, pay, supervise and discharge the personnel necessary to be employed, and provide the equipment and materials necessary, to properly maintain the exterior and roofs of the Units and to properly maintain and operate the Common Elements. Compensation for the services of such employees shall be considered an operating expense of the Association; and
- (11) To place and keep in force all insurance coverage required to be maintained by the Association, applicable to its property and members including, but not limited to:
  - (a) Physical Damage Insurance - Broad form insurance against loss by fire and against loss by lightning, windstorm and other risks normally included within

extended coverage, insuring all improvements existing on the Common Elements, together with all service machinery appurtenant thereto, and covering the interest of the Association, the Board, Sponsor, and all Unit Owner-members and holders of Permitted Mortgages as their interests may appear, in an amount equal to the full replacement value of such improvements without deduction for depreciation. Each policy shall contain a standard mortgagee clause in favor of each holder of a Permitted Mortgage, which shall provide that the loss, if any, thereunder shall be payable to each such holder as its interests may appear. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board shall obtain a qualified appraisal of the full replacement value of the Units and Common Elements and the improvements located thereon, without determining the amount of fire insurance to be effected pursuant to this Section. Until the first meeting of the Board following the first annual meeting, such physical damage insurance shall be in an amount not less than \$1,000,000.00.

(b) Public Liability Insurance - To the extent obtainable, public liability insurance for personal injury and death from accidents occurring within Common Elements, and the defense of any actions brought by reason of any injury or death of a person or damage to property, occurring within Common Elements, and not arising by reason of any act or negligence of any individual member. Such insurance shall be in such limits as the Board may, from time to time, determine covering each trustee, the manager and each member, and shall also cover cross liability claims of one insured against another. The Board shall review such limits at least once a year. Until the first meeting of the Board following the first annual meeting, such public liability insurance shall be in an amount not less than \$500,000.00 for claims for bodily injury, death and/or property damage in any one occurrence.

(c) Workers' Compensation - As required by law.

(d) Other Insurance - Such other insurance as the Board may determine.

Owners shall not be prohibited from carrying insurance for their own benefit provided that all such policies shall contain waivers of subrogation and provided that the liability of carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.

(12) To manage the fiscal affairs of the Association as provided in the Master Deed, Certificate of Incorporation and these By-laws; and

(13) To borrow and repay monies giving notes, mortgages or other security upon such term or terms as the Board deems necessary; and

(14) To invest and reinvest monies, sue and be sued; collect interest, dividends, and capital gains; exercise rights; pay taxes; make and enter into contracts; enter into leases or concessions; make and execute any and all proper affidavits for various purposes; compromise any action; and to exercise all other powers necessary and incidental thereto; and

(15) To grant and obtain easements, licenses and other property rights with respect to contiguous lands; and

(16) To purchase or lease or otherwise acquire in the name of the Association or its designees, corporate or otherwise, on behalf of all members, Units offered for sale or lease or surrendered by their Owners to the Board; and

(17) To purchase Units within the Condominium at foreclosure or other judicial sales in the name of the Association or its designees, corporate or otherwise, on behalf of all members; and

(18) To sell, lease, mortgage (but not vote the votes appurtenant thereto) or otherwise deal with Units acquired by the Association, and sublease any such Units leased by the Association or its designees, on behalf of all members; and

(19) To bring and defend actions and proceedings which are pertinent to the Condominium or the health, safety or general welfare of the Unit Owners; and

(20) To appoint an insurance trustee, who shall not be a member of the Association, an employee of Sponsor, or the manager, who shall discharge duties in accordance with these By-laws; provided that, in the absence of such an appointment, the Board shall be responsible for the disposition of all insurance proceeds; and

(21) To create, appoint members to, remove members of, designate duties of, and disband such committees as shall, from time to time, be deemed appropriate or necessary to aid the Board in the discharge of its duties, functions and powers.

## ARTICLE VI

### FISCAL MANAGEMENT

**SECTION 6.01. Fiscal Year.** The fiscal year of the Association shall be the calendar year, unless otherwise decided by the Board.

**SECTION 6.02. Budget; Common Expense Assessments.** The Board shall prepare an annual Common Expense budget which shall estimate the anticipated revenues, operating expenditures and repair and replacement reserves requirements for the following fiscal year of the Association. The Board shall have the duty to collect from each member and the member's heirs, administrators, successors and assigns, as Annual Common Expense Assessments, a proportionate part of the annual Common Expenses assessed against each Unit as provided in the Master Deed, the Certificate of Incorporation, these By-laws, the Rules and Regulations, and in accordance with applicable law.

**SECTION 6.03. Disbursements.** The Board shall take and hold the funds as collected and shall disburse the same for the purposes and in the manner set forth herein and as required by the Master Deed, Certificate of Incorporation, these By-laws, the Rules and Regulations, and applicable law.

**SECTION 6.04. Depositories.** The depositories of the Association shall be such a bank or banks as shall be designated from time to time by the Board and in which the monies of the Association shall be deposited. Withdrawal of monies from such

accounts shall be only by checks signed by such parties as are authorized by the Board, provided that a management agreement may include among its provisions, authority for the manager to sign checks on behalf of the Association for payment of the obligations of the Association.

**SECTION 6.05. Accounts.**

(a) Receipts and expenditures of the Association shall be Assessments and Common Expenses respectively, and shall be credited and charged to accounts under the following classifications as the Board shall deem appropriate:

(1) Current expenses, which shall include expenditures within the year for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves, or to additional improvements, or to operations. Any surplus balance of this fund at the end of each fiscal year may be applied to reduce Assessments for current expenses for the succeeding year, transferred to any reserve account(s), or distributed to the membership in the same manner as assessed, as the Board shall determine.

(2) Reserve for deferred maintenance, which shall include funds for maintenance items that occur less frequently than annually.

(3) Reserve for replacement, which shall include funds for repair or replacement of Common Elements or other facilities and of the Association required because of damage, depreciation or obsolescence, and which shall be allocated among each of the separate categories of replacement items.

(4) Reserve for capital improvements, which shall include the funds to used for capital expenditures for additional improvements or additional personal property that will be part of the Common Elements.

(5) Operations, which shall include any gross revenues from the use of the Common Elements or from any other sources. Only the additional direct expense required by any revenue producing operation will be charged to this account, and any

surplus from any operation or otherwise may be used to reduce the Assessments for current expenses for any year, or transferred to any reserve account(s), as the Board shall determine. Losses from operations or otherwise may be offset by Special Assessments, which Special Assessments may be made in advance to provide a working fund.

(6) Working capital, consisting of those non-refundable and non-transferrable contributions assessed upon each Owner upon acquisition of title to a Unit imposed under Section 2.06, which may be utilized by the Board in its reasonable discretion to meet unanticipated or other expenses of the Association (but not to reduce the Annual Common Expense Assessment).

(b) The Board shall not be required to physically segregate the funds held in the above accounts, but may, in its sole discretion, maintain the funds in one or more consolidated accounts. As to each consolidated account, the division into the various accounts set forth above need be made only on the Association's records.

**SECTION 6.06. Reserves.** The Board shall not be obligated to expend all of the revenues collected in any accounting period, and must maintain reasonable reserves for, among other things, repairs, replacements, emergencies, contingencies of bad weather or uncollected accounts. Notwithstanding anything herein to the contrary, the Board in its determination of the Common Expenses and the preparation of a budget shall specifically designate and identify that portion of the Common Expenses which is to be assessed against the Units as a capital contribution and is allocable to reserves for each separate item of repair and capital improvement. The amounts assessed and collected for each such separate item of repair and improvement shall be kept in interest-bearing savings accounts, appropriately earmarked for each category. The foregoing shall not be construed to mean that the Board shall not be permitted to keep additional cash on hand, in a checking or petty cash account, for the necessary discharge of its functions.

SECTION 6.07. *Assessment Payments by Sponsor.* Anything to the contrary herein notwithstanding, Sponsor shall be obligated to pay Common Expense Assessments only for those Units owned by Sponsor for which the Township has issued a permanent or temporary certificate of occupancy; provided that, while Sponsor holds one or more Units for sale in the ordinary course of business, Sponsor shall not be obligated to pay any Assessment or portion thereof intended to be used for any capital improvement.

SECTION 6.08. *Acceleration of Assessment Installment upon Default.* If a member is in default in the payment of an installment of any Assessment, the Board may accelerate the remaining installments of the Assessment and the remaining amounts due for the balance of the fiscal or calendar year, upon written notice to the member, and the then unpaid balance of the Assessment shall come due upon the date stated in the notice, but not less than five (5) days after delivery of notice to the member, or not less than ten (10) days after the mailing of such notice to the member by registered or certified mail, whichever shall first occur.

SECTION 6.09. *Lien.* If a member is in default in the payment of any Assessment, or portion thereof, and such default shall continue for a period of thirty (30) days, the Board shall be obligated to: (a) accelerate any and all remaining installments of the Assessment in accordance with Section 6.08; (b) record a claim of lien for such accelerated Assessment amount in accordance with the applicable provision of the New Jersey Condominium Act; and (c) notify and holder of a Permitted Mortgage on the affected Unit. If the default continues for a period of thirty (30) days after the recording of the claim of lien, then the Board may foreclose its lien pursuant to law and/or commence a suit against the appropriate parties to collect the amounts due.

SECTION 6.10. *Late Charges, Interest and Legal Fees.* The Board, at its option, shall have the right to impose a late charge, fine or penalty, and/or interest at the legal maximum rate, if any Assessment is not paid when due. If the Board uses legal or



other professional assistance for collection purposes, the Board may also add to the Assessment due, a charge for the fees of the attorneys and other professionals, in addition to collection costs such as, without limitation, the costs of recording a claim of lien and any related amendments and discharge of lien.

**SECTION 6.11. Assessment of Expenses for Actions and Proceedings; Allocation of Awards.**

(a) **Common Expenses.** In the case of any litigation, arbitral, administrative or other action or proceeding brought or defended by the Association pursuant to the provisions of the Master Deed, Certificate of Incorporation, these By-laws, the Rules and Regulations, or the Declaration of Covenants, Conditions and Restrictions of Resale and Rental for Birch Glen Condominium, the reasonable costs and expenses of preparation, prosecution and defense, including attorneys' and experts' fees, shall be Common Expenses. All Common Expense Assessments received and to be received by the Board, for the purpose of paying any judgment against the Association or the Board, and the right to receive such funds, shall constitute trust funds and the same shall be expended first for such purpose before expending any portion thereof for any other purpose.

(b) **Allocation of Awards.** Money judgments recovered by the Association in any such action or proceeding, including costs, penalties or damages, shall be deemed a special fund to be applied to (1) the payment of unpaid expenses related to the action or proceeding; (2) Common Expense Assessments, if the recovery thereof was the purpose of the action or proceeding; (3) repair or reconstruction of the Common Elements if recovery of damages to same was the purpose for the action or proceeding; and (4) any amount not applied to (1), (2) and (3) above shall, at the discretion of the Board, be treated either as (a) a common surplus which shall be allocated and distributed pursuant to the provisions of Article 6 of the Master Deed or (b) a set-off against the Common Expense Assessments generally. Notwithstanding the foregoing, if any member(s), the Board, or any other person or legal entity affected by any such

distribution, shall assert that the damages sustained by any member(s) were disproportionate to the allocated amount of any common surplus, in that event the matter, unless otherwise settled among all affected parties, shall be submitted to arbitration in accordance with Article XIV hereof.

(c) **Recovery by Member.** In the event that any member(s) succeeds in obtaining a judgment or order against the Association or the Board, then in addition to any other sums to which said Owner(s) would otherwise be entitled by such judgment or order, the member(s) shall also be entitled to the restitution or recovery of any amounts paid to the Board as Common Expense Assessments for expenses relating to such action or proceeding.

**SECTION 6.12. Annual Audit.** The Association shall submit its books, records, and memoranda to an annual audit by an independent certified public accountant designated by the Board who shall conduct an audit and render a report in writing to the Board.

While the developer maintains a majority of the executive board, he shall have an annual audit of association funds prepared by an independent accountant, a copy of which shall be delivered to each unit owner within ninety (90) days of the expiration of the fiscal year of the association. The audit shall cover the operating budget and reserve accounts.

**SECTION 6.13. Examination of Books and Records.** Each member shall be permitted to examine the books and records of the Association at a reasonable time on business days; provided, however, that the Treasurer and Secretary of the Association have been given at least ten (10) days prior written notice of the member's desire to make such an examination.

**SECTION 6.14. Fidelity Bonds.** Fidelity bonds may be required by the Board from any and all persons handling or responsible for Association funds. The amount of

any such bonds shall be determined by the Board. The premium on such bonds shall be paid by the Association.

While the developer maintains a majority of representation on the executive board, he shall post a fidelity bond or other guarantee acceptable to the Agency, in an amount equal to the annual budget. For the second and succeeding years, the bond or other guarantee shall include accumulated reserves .

## ARTICLE VII

### OFFICERS

SECTION 7.01. Designation. The principal officers of the Association shall be a President, a Vice President, both of whom shall be trustees, a Secretary and a Treasurer. The Board may also appoint such other Assistant Treasurers and Assistant Secretaries as in its judgment may be necessary. Any two (2) offices, except that of President and Vice President, may be held by one person.

SECTION 7.02. Election. The officers of the Association shall be elected annually by the Board at the first Board meeting following each annual meeting of members, or as soon thereafter as possible, and the officers elected shall hold office at the pleasure of the Board.

SECTION 7.03. Removal. Upon the vote of a majority of the trustees, any officer may be removed, either with or without cause, after opportunity for a hearing, and a successor elected.

#### SECTION 7.04. Duties and Responsibilities.

(a) The President shall be the chief executive officer of the Association. The President shall chair meetings of the membership and the Board, except as otherwise provided in these By-laws. The President shall have all of the general powers and duties which are usually vested in the office of president of a nonprofit corporation and a condominium association.

(b) The Vice President shall take the place of the President and perform the President's duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint another trustee to do so on an interim basis.

(c) The Secretary shall keep, or cause to be kept, minutes of all meetings of the Board and minutes of all meetings of the membership of the Association; shall have charge of such books and papers of the Association as the Board may direct; and shall, in general, perform all the duties incident to the office of a secretary of a nonprofit corporation and a condominium association.

(d) The Treasurer shall have responsibility for the custody of Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in Association books. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in depositories of the Association; and shall, in general, perform all the duties incident to the office of a treasurer of a nonprofit corporation and a condominium association.

The officers shall have such other duties, powers and responsibilities as shall, from time to time, be authorized by the Board.

SECTION 7.05. Eligibility of Trustees. Nothing herein contained shall prohibit a trustee from being an officer.

#### ARTICLE VIII

#### COMPENSATION, INDEMNIFICATION AND EXCULPABILITY

SECTION 8.01. Compensation. No compensation shall be paid to the President or the Vice President or any trustee, or committee member, for acting as such officer, trustee, or committee member. The Secretary and/or Treasurer and/or any Assistant Secretary or Assistant Treasurer may be compensated for their services if the Board determines that such compensation is appropriate. Nothing herein stated shall

prevent any officer or trustee from being reimbursed for out-of-pocket expenses or compensated for services rendered in any other capacity to or for the Association.

**SECTION 8.02. Indemnification.** Each trustee, officer or committee member of the Association shall be indemnified by the Association against the actual amount of net loss, including counsel fees, reasonably incurred by or imposed upon the trustee, officer or committee member in connection with any action, suit or proceeding to which the trustee, officer or committee member may be made a party by reason of being or having been a trustee, officer or committee member of the Association, except as to matters as to which the trustee, officer or committee member shall be finally found in such action to be liable for gross negligence or wilful misconduct. Nothing contained herein to the contrary shall serve to exculpate members of the Board of Trustees/Directors appointed by the Sponsor from their fiduciary responsibilities. The fiduciary responsibilities to the Association are the same as any other director/trustee of a corporation and can not be disclaimed, except to the minimum extent required by law, sponsor appointed directors/trustees shall be held harmless and indemnified by the Association for their actions on behalf of the Association in their capacity as directors/trustees. In the event of a settlement of any such case, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by legal counsel that the person to be indemnified had not been guilty of gross negligence or wilful misconduct.

**SECTION 8.03. Exculpation.** Unless acting in bad faith, neither the Board as a body nor any trustee, officer or committee member, of the Association, nor the delegees of any of them, shall be personally liable to any member in any respect for any action or lack of action arising out of the execution of his or her position or office. Each member shall be bound by the good faith actions of the Board, officers and committee members of the Association in the execution of the duties and powers of the trustees, officers and committee members. Nothing contained herein to the contrary shall serve

to exculpate members of the Board of Directors appointed by the Sponsor from their fiduciary responsibilities.

## ARTICLE IX

### ADDITIONS, ALTERATIONS OR IMPROVEMENTS

In the event the Board proposes an addition, alteration or improvement of any of the General Common Elements costing in excess of \$5,000.00, such addition, alteration or improvement shall not be made unless authorized by the vote in person, by proxy or by ballot of at least three-fourths (3/4) of the members of the Association in good standing. If such approval is obtained, all Units shall be assessed for the cost thereof. In the event of an emergency which could cause damage to any of the Common Elements or Units, however, the Board may expend sums in excess of \$5,000.00 for an addition, alteration or improvement to protect any Common Element or Unit(s), and the determination of an emergency by the Board shall be final.

## ARTICLE X

### ENFORCEMENT

SECTION 10.01. Enforcement. In addition to its other enforcement rights and duties and remedies provided under the Master Deed, Certificate of Incorporation, these By-laws, the Rules and Regulations and law, the Board shall have the power, at its sole option, to enforce the terms of these By-laws or the Rules and Regulations by any or all of the following: sending notice to the offending party to cause certain things to be done or undone; restoring the Association to its original position and charging the breaching party with the entire cost or any part thereof; complaint to authorities having jurisdiction; taking action before any court or tribunal, summary or otherwise, as may be provided by law.

(a) Subject to the Master Deed, or other instruments of creation, the Association may do all that it is legally entitled to do under the laws applicable to its form of organization.

(b) The Association shall discharge its powers in a manner that protects and furthers the health, safety, and general welfare of the residents of the community.

(c) The Association shall provide a fair and efficient procedure for the resolution of housing-related disputes between individual unit owners and the Association, and between different unit owners, that shall be readily available as an alternative to litigation. All expenses shall be common expenses.

SECTION 10.02. Fines. The Board shall also have the power to levy fines for violation(s) of the Rules and Regulations, Master Deed or these By-laws, except that no fine may be levied for more than \$25.00 for any one violation, but for each day a violation continues after notice it shall be considered a separate violation. Fines imposed by the Board shall be deemed Assessments collectible as any other Assessment. Notwithstanding the foregoing, before any fine is imposed by the Board, the affected member shall be given at least ten (10) days prior written notice of the violation and afforded an opportunity to be heard.

## ARTICLE XI

### AMENDMENTS

These By-laws may be amended or repealed, or new By-laws made, as authorized by the vote in person, by proxy or by ballot of at least three-fourths (3/4) of the members in good standing, except that (1) the first annual meeting of members may not be advanced, (2) the number of trustees not be increased or decreased prior to the 75% transition election except as provided in Section 4.03 above, and (4) no such amendment, repeal or new by-laws shall in any way affect Sponsor without Sponsor's prior written consent.

## ARTICLE XII

### CONFLICT; INVALIDITY

SECTION 12.01. Conflict. Anything to the contrary herein notwithstanding, if any provision of these By-laws is in conflict with or contradiction of the Master Deed,

the Master Deed, Conditions and Restrictions of Resale and Rental for Birch Glen Condominium (while such Master Deed, Conditions and Restrictions is in effect), the Certificate of Incorporation or with the requirements of any law, then the requirements of the Master Deed, the Declaration of Covenants, Conditions and Restrictions of Resale and Rental for Birch Glen Condominium, the Certificate of Incorporation or law shall be deemed controlling.

SECTION 12.02. Invalidity. The invalidity of any provision of these By-laws shall not impair or affect in any manner the enforceability or affect the validity of the remaining provisions of the By-laws.

### ARTICLE XIII

#### NOTICE

Except as otherwise expressly provided, any notice required to be sent to any Association member under the provisions of the Master Deed, Certificate of Incorporation or these By-laws shall be deemed to have been properly sent and given, when mailed, by at least first class United States mail with postage prepaid, addressed to the Association member at the last known post office address of the member on the records of the Association at the time of such mailing. Notice to one of two or more co-Owners of a Unit shall constitute notice to all other co-Owners of the Unit. It shall be the obligation of every Association member to immediately notify the Secretary or manager of the Association in writing of any change of address. Valid notice may also be given to members (a) by personal delivery to any occupant of the member's Unit over 14 years of age, or (b) by affixing the notice to or sliding the notice under the front door of the member's Unit.

### ARTICLE XIV

#### ARBITRATION

Any arbitration provided for in these By-laws shall be conducted before one arbitrator in Middlesex County, New Jersey, by the American Arbitration Association



or other arbitration association agreed upon by the parties, in accordance with its rules then in effect. The decision rendered in such arbitration shall be binding upon the parties and may be entered in any court having jurisdiction.

ARTICLE XV

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words "Birch Glen Condominium Association, Inc."